



General Assembly

January Session, 2025

**Raised Bill No. 7105**

LCO No. 5443



Referred to Committee on HUMAN SERVICES

Introduced by:  
(HS)

***AN ACT CONCERNING FORENSIC AUDITS CONDUCTED BY THE DEPARTMENT OF SOCIAL SERVICES.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 17b-99a of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective from passage*):

3 (a) (1) For purposes of this section, (A) "extrapolation" means the  
4 determination of an unknown value by projecting the results of the  
5 review of a sample to the universe from which the sample was drawn,  
6 (B) "facility" means any facility described in this subsection and for  
7 which rates are established pursuant to section 17b-340 or 17b-340d,  
8 [and] (C) "universe" means a defined population of claims submitted by  
9 a facility during a specific time period, and (D) "forensic audit" means  
10 an examination of financial records for information or evidence that  
11 may be used to determine compliance with applicable law.

12 (2) The Commissioner of Social Services shall conduct any audit,  
13 including a forensic audit, of a licensed chronic and convalescent  
14 nursing home, chronic disease hospital associated with a chronic and  
15 convalescent nursing home, a rest home with nursing supervision, a

16 licensed residential care home, as defined in section 19a-490, and a  
17 residential facility for persons with intellectual disability which is  
18 licensed pursuant to section 17a-227 and certified to participate in the  
19 Medicaid program as an intermediate care facility for individuals with  
20 intellectual disabilities in accordance with the provisions of this section.

21 (b) Not less than thirty days prior to the commencement of any such  
22 audit, the commissioner shall provide written notification of the audit  
23 to such facility, unless the commissioner makes a good-faith  
24 determination that (1) the health or safety of a recipient of services is at  
25 risk; or (2) the facility is engaging in vendor fraud under sections 53a-  
26 290 to 53a-296, inclusive.

27 (c) Any clerical error, including, but not limited to, recordkeeping,  
28 typographical, scrivener's or computer error, discovered in a record or  
29 document produced for any such audit, shall not of itself constitute a  
30 wilful violation of the rules of a medical assistance program  
31 administered by the Department of Social Services unless proof of intent  
32 to commit fraud or otherwise violate program rules is established. In  
33 determining which facilities shall be subject to audits, the Commissioner  
34 of Social Services may give consideration to the history of a facility's  
35 compliance in addition to other criteria used to select a facility for an  
36 audit.

37 (d) A finding of overpayment or underpayment to such facility shall  
38 not be based on extrapolation unless (1) there is a determination of  
39 sustained or high level of payment error involving the facility, (2)  
40 documented educational intervention has failed to correct the level of  
41 payment error, or (3) the value of the claims in aggregate exceeds two  
42 hundred thousand dollars on an annual basis.

43 (e) A facility, in complying with the requirements of any such audit,  
44 shall be allowed not less than thirty days to provide documentation in  
45 connection with any discrepancy discovered and brought to the  
46 attention of such facility in the course of any such audit.

47 (f) The commissioner shall produce a preliminary written report  
48 concerning any audit conducted pursuant to this section and such  
49 preliminary report shall be provided to the facility that was the subject  
50 of the audit not later than sixty days after the conclusion of such audit.

51 (g) The commissioner shall, following the issuance of the preliminary  
52 report pursuant to subsection (f) of this section, hold an exit conference  
53 with any facility that was the subject of any audit pursuant to this  
54 subsection for the purpose of discussing the preliminary report. Such  
55 facility may present evidence at such exit conference refuting findings  
56 in the preliminary report.

57 (h) The commissioner shall produce a final written report concerning  
58 any audit conducted pursuant to this subsection. Such final written  
59 report shall be provided to the facility that was the subject of the audit  
60 not later than sixty days after the date of the exit conference conducted  
61 pursuant to subsection (g) of this section, unless the commissioner and  
62 the facility agree to a later date or there are other referrals or  
63 investigations pending concerning the facility.

64 (i) Any facility aggrieved by a final report issued pursuant to  
65 subsection (h) of this section may request a rehearing. A rehearing shall  
66 be held by the commissioner or the commissioner's designee, provided  
67 a detailed written description of all items of aggrievement in the final  
68 report is filed by the facility not later than ninety days following the date  
69 of written notice of the commissioner's decision. The rehearing shall be  
70 held not later than thirty days following the date of filing of the detailed  
71 written description of each specific item of aggrievement. The  
72 commissioner shall issue a final decision not later than sixty days  
73 following the close of evidence or the date on which final briefs are filed,  
74 whichever occurs later. Any items not resolved at such rehearing to the  
75 satisfaction of the facility or the commissioner shall be submitted to  
76 binding arbitration by an arbitration board consisting of one member  
77 appointed by the facility, one member appointed by the commissioner  
78 and one member appointed by the Chief Court Administrator from

79 among the retired judges of the Superior Court, which retired judge  
80 shall be compensated for his services on such board in the same manner  
81 as a state referee is compensated for his services under section 52-434.  
82 The proceedings of the arbitration board and any decisions rendered by  
83 such board shall be conducted in accordance with the provisions of the  
84 Social Security Act, 42 USC 1396, as amended from time to time, and  
85 chapter 54.

86 (j) The submission of any false or misleading fiscal information or  
87 data to the commissioner shall be grounds for suspension of payments  
88 by the state under sections 17b-239 to 17b-246, inclusive, and sections  
89 17b-340 and 17b-343, in accordance with regulations adopted by the  
90 commissioner. In addition, any person, including any corporation, who  
91 knowingly makes or causes to be made any false or misleading  
92 statement or who knowingly submits false or misleading fiscal  
93 information or data on the forms approved by the commissioner shall  
94 be guilty of a class D felony.

95 (k) The commissioner, or any agent authorized by the commissioner  
96 to conduct any inquiry, investigation or hearing under the provisions of  
97 this section, shall have power to administer oaths and take testimony  
98 under oath relative to the matter of inquiry or investigation. At any  
99 hearing ordered by the commissioner, the commissioner or such agent  
100 having authority by law to issue such process may subpoena witnesses  
101 and require the production of records, papers and documents pertinent  
102 to such inquiry. If any person disobeys such process or, having  
103 appeared in obedience thereto, refuses to answer any pertinent question  
104 put to the person by the commissioner or the commissioner's authorized  
105 agent or to produce any records and papers pursuant thereto, the  
106 commissioner or the commissioner's agent may apply to the superior  
107 court for the judicial district of Hartford or for the judicial district  
108 wherein the person resides or wherein the business has been conducted,  
109 or to any judge of such court if the same is not in session, setting forth  
110 such disobedience to process or refusal to answer, and such court or  
111 judge shall cite such person to appear before such court or judge to

112 answer such question or to produce such records and papers.

113 (l) The commissioner shall provide free training to facilities on the  
114 preparation of cost reports to avoid clerical errors and shall post  
115 information on the department's Internet web site concerning the  
116 auditing process and methods to avoid clerical errors. Not later than  
117 April 1, 2015, the commissioner shall establish audit protocols to assist  
118 facilities subject to audit pursuant to this section in developing  
119 programs to improve compliance with Medicaid requirements under  
120 state and federal laws and regulations, provided audit protocols may  
121 not be relied upon to create a substantive or procedural right or benefit  
122 enforceable at law or in equity by any person, including a corporation.  
123 The commissioner shall establish and publish on the department's  
124 Internet web site audit protocols for: (1) Licensed chronic and  
125 convalescent nursing homes, (2) chronic disease hospitals associated  
126 with chronic and convalescent nursing homes, (3) rest homes with  
127 nursing supervision, (4) licensed residential care homes, as defined in  
128 section 19a-490, and (5) residential facilities for persons with intellectual  
129 disability that are licensed pursuant to section 17a-227 and certified to  
130 participate in the Medicaid program as intermediate care facilities for  
131 individuals with intellectual disabilities. The commissioner shall ensure  
132 that the Department of Social Services, or any entity with which the  
133 commissioner contracts to conduct an audit pursuant to this section, has  
134 on staff or consults with, as needed, licensed health professionals with  
135 experience in treatment, billing and coding procedures used by the  
136 facilities being audited pursuant to this section.

137 (m) (1) Notwithstanding the provisions of this section, the  
138 commissioner shall not conduct a forensic audit of a facility unless the  
139 commissioner (A) provides the facility with an opportunity to meet with  
140 Department of Social Services representatives and respond to any  
141 financial concerns identified by the commissioner, and (B) makes a good  
142 faith determination that a forensic audit of such facility is necessary to  
143 evaluate such financial concerns.

144 (2) If a facility receives a written request by the department to  
145 cooperate and assist with a forensic audit, such facility shall provide the  
146 cooperation and assistance requested by the department not more than  
147 ten business days after the date the facility receives such request and  
148 shall ensure that all facility personnel, financial consultants and  
149 accountants fully cooperate and assist with a forensic audit as may be  
150 necessary, except no facility shall be required to divert facility personnel  
151 from residential care duties and responsibilities to cooperate and assist  
152 with such forensic audit. Any facility that fails to provide such  
153 cooperation and assistance shall be subject to a civil monetary penalty  
154 not to exceed one thousand dollars per business day for each business  
155 day that the facility fails to comply with such written request. A facility  
156 may request a fair hearing on the assessment of any such civil monetary  
157 penalty as an aggrieved person pursuant to section 17b-60.

158 (3) A facility may be liable to the Department of Social Services for  
159 the costs of a forensic audit of a facility identified by the department as  
160 experiencing a serious financial loss, including, but not limited to, any  
161 reports or subsequent testimony related thereto, provided liability for  
162 such costs shall not exceed one hundred thousand dollars. Such costs,  
163 not to exceed one hundred thousand dollars, may be assessed against  
164 any single facility, or in the aggregate if more than one facility is subject  
165 to a particular forensic audit.

166 (n) The Department of Social Services may recover (1) subject to the  
167 provisions of subdivision (3) of subsection (m) of this section, the costs  
168 of any forensic audit conducted pursuant to the provisions of this  
169 section from a facility if such forensic audit identifies material issues  
170 with a facility's internal financial management or the integrity of a  
171 facility's financial statements, or (2) civil monetary penalties assessed  
172 against a facility in accordance with subdivision (2) of subsection (m) of  
173 this section through recoupment of such forensic audit costs or civil  
174 monetary penalties against funds that would otherwise be paid to such  
175 facility for services rendered to recipients of assistance under the  
176 Medicaid program.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	17b-99a

**Statement of Purpose:**

To clarify the definition of a forensic audit, the circumstances under which such an audit will be conducted by the Department of Social Services and costs and penalties for a facility associated with such an audit.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*